

REMARKS

Claims 1-7, 9-15 and 17 are currently pending in the case, and all stand rejected under 35 U.S.C. §102(e) as anticipated by Joyce (US Patent No. 6,519,703).

Additionally, claim 10, rejected under 35 U.S.C. §112 as indefinite, has been amended to reflect that, in the particular embodiment of the invention claimed in that claim, a hierarchical value is associated with each of those source addresses on the network from which the protected site has received a transmission (Application, p. 6, lines 31-32). Thus, there need not be a hierarchical value associated with every address. In that case, the hierarchical value forms a basis for selectively passing packets only with respect to those addresses to which a hierarchical value has been associated. Claim 10 as now amended is believed to overcome the flagged indefiniteness issue.

Applicant now addresses the distinction of the present invention with respect to Joyce and the patentability over Joyce of the pending claims as currently amended.

Joyce teaches a method for preprocessing packets on the basis of a learned heuristic and, on the basis of that determination, Joyce teaches that traffic is dropped if it is determined to be harmful at some level. The technology taught by Joyce is directed to bolstering the *security* of a site by dropping packets determined to be inadequate. It is likely, however, that valid packets will be dropped on the basis of this determination – effectively, a ‘false positive’ – solely for lack of confidence relative to a specified level.

On the other hand, Applicant’s invention, with an eye to addressing network *availability*, need only cull packets in response to the load currently on the system relative to the system bandwidth. Accordingly, the present invention need not characterize a packet as ‘bad’ and bar its passage into the system, as taught by Joyce, but, instead, monitors a system load and, only in the face of a bottleneck, weights individual packets in terms of a heuristic value assigned to its associated source.

Claims 1, 10, and 17 have been amended to reflect the load monitoring aspect of embodiments of the present invention. This aspect is taught in the Application at page 5, lines 11-28, for example.

No such teaching of a threshold determined by system load is to be found in Joyce, in particular, no such teaching is found in the passages (col. 3, lines 29-67 and col. 4, lines 34-60) cited against former claim 8 (now cancelled).

The Applicant respectfully requests reconsideration of the pending claims in view of the amendments made and the distinctions discussed, and a notice of allowance is requested. The Applicant also kindly requests that the Examiner contact the undersigned if it will assist examination of the pending claims.

Respectfully submitted,



Samuel J. Petuchowski
Registration No. 37,910
Attorney for the Applicants

BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, MA 02110-1618
(617) 443-9292

02590/00102 380617.1